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(2)

DB(Cri)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

Criminal Appeal No. 1659 of 1998

(Memorandum of Appeal Under Section 374 of Cr.P.C.)

APPELLANTS IN JAIL : 1. Kamlu S/o Hari Ram, by caste Ganda, aged about 30 years.

2. Hari Ram S/o Pilaji by caste Ganda, aged about 50 years.

3. Dhani Ram S/o Hari Ram, by caste Ganda, aged about 26 years.

All resident of Nawagaon, Thana Kondagaon, district Bastar (MP).

Filed on 18.7.98
by Shri Arul Das
Advocate

Rlo. A.R.

Versus

RESPONDENT : The State of Madhya Pradesh through District Magistrate Jagdalpur (Bastar).

MEMORANDUM OF APPEAL UNDER SECTION 374 OF Cr.P.C.

(24)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक C.A. No. 1659/98 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO
& HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 1659 of 1998

Appellants : Kamlu & Others

Vs.

Respondent : State of Madhya Pradesh

Shri S.R.J.Jaiswal, learned counsel for the appellants.

Shri U.N.S.Deo, learned Govt. Advocate with Shri Ravindra Agrawal, P.L. for the State/respondent.

ORAL JUDGMENT
(23.02.2006)

L.C.Bhadoo, J

By this appeal under Section 374(2) of the Criminal Procedure Code the accused/appellants namely Kamlu, Hari Ram and Dhani Ram have questioned the legality and correctness of the judgment of conviction and order of sentence dated 04.07.98 passed by learned Third Additional Sessions Judge, Bastar at Jagdalpur in S.T. No. 425/97 whereby the learned Additional Sessions Judge after holding the accused/appellants guilty for the commission of offence under Section 302/34 of the IPC sentenced each of the accused/appellants to undergo imprisonment for life and to pay a fine of Rs. 1,000/-, in default of payment of fine to further undergo RI for one year.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक C.A.No. 1659 सन् 98

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
2.	Case of the prosecution, in brief, is that P.W.-1 Sukhwati Bai, wife of the deceased lodged report P-1 in the police chowki Mardapal to the effect that a day before thereto her husband returned after participating in the feast on the occasion of *Navakhani* in the village Navagaon and informed her that on the ground of land partition accused persons Hari Ram and Dhani Ram quarrelled with him and thereafter at about 10.30 p.m. in the night when she along with her husband Shukla Ji were sleeping in their house, the accused persons namely Hari Ram and Dhani Ram entered in the house and accused/appellant Hari Ram attacked her husband with the axe on his head whereas accused/appellant Dhani Ram attacked with arrow on the left side of his chest. After receiving these injuries her husband started writhing in pain and accused persons leaving behind the axe and arrow, ran away. Accused/appellant Kamlu was standing in the courtyard and the kerosene lamp was burning in the house, therefore, she was able to see the accused persons. She raised screams, on which the neighbours Sukhchand, Fagdu and Bakhru came to her house and saw that Shukla Ji was lying in the pool of blood and blood was oozing out of the injuries on the head as a result of which her face and blouse was stained with blood. Receiving this report, the S.H.O. P.L.Noutiyal registered the crime under Section 307 of the IPC and left for the scene of occurrence. Shukla Ji was sent to R.N.T. Hospital, Kondagaon where injuries on the body of Shukla Ji were examined by P.W.-6 Dr. Virendra Singh Doomar who prepared injury report P-12. However during the treatment Shukla Ji died. Merg intimation P-23 was sent to police station Kondagaon and the case was converted into Section 302 of the IPC. The Investigating Officer prepared the panchnama of the dead body P-2. One axe and two arrows stained with blood were taken into possession under	

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मामला क्रमांक Cr.A.No. 1659/98 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	P-3. The blood stained blouse of Sukhwati was taken into possession under P-4. The post mortem on the body of Shukla Ji was conducted by Dr. Atul Jain, Asstt. Surgeon, Kondagaon who prepared the post mortem report P-8. The blood stained soil and plain soil were taken into possession under P-13 & P-14. The blood stained upper undergarment of Shukla Ji was taken into possession under P-15. The ASI prepared the site plan of the place of occurrence P-16 and the seized articles were sent for chemical examination to Forensic Science Laboratory, Raipur P-22. After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Kondagaon for the commission of offence under Section 302 read with Section 34 of the IPC who in turn committed the case to Sessions Judge, Jagdalpur from where the learned Third Additional Sessions Judge received the case on transfer for trial.	
3.	The prosecution in order to establish the charge against the accused/appellants examined eight witnesses. Statement of the accused persons were also recorded in which they denied the material appearing against them and stated that they are innocent and have been falsely implicated in the crime.	
4.	Learned Additional Sessions Judge after hearing the arguments of the Additional Public Prosecutor and counsel for the accused/appellants convicted and sentenced the accused/appellants as mentioned in paragraph one of this judgment.	
5.	We have heard Shri S.R.J.Jaiswal, counsel for the accused/appellants and Shri U.N.S.Deo with Shri Ravindra Agrawal on behalf of the State.	

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आदेश पत्रक

मामला क्रमांक Cr.A.No. 169/98 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
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6.	Homicidal death of Shukla Ji is not in dispute.	
7.	As far as involvement of the accused/appellants in the crime in question is concerned, Mr. Jaiswal argued that as per the First Information Report, at the time of the incident there was dark night and it was not possible for Sukhwati Bai, wife of the deceased, to identify the accused persons and burning of Kerosene lamp has been introduced just to show the identification of the accused. He further argued that as far as accused Dhaniram is concerned, the allegation against him is that he stabbed Shukla Ji with the arrow on the stomach and the doctor has opined that the cause of death was due to head injury which was inflicted by Hari Ram, therefore the offence against accused/appellant Dhani Ram does not travel beyond Section 324 of the IPC. As far as the accused/appellant Kamlu is concerned, there is no evidence against him and he has been wrongly convicted with the aid of Section 34 of the IPC.	
8.	On the other hand, learned counsel for the State supported the judgment of the trial Court.	
9.	In order to appreciate the arguments advanced by the counsel for the parties, we have scrutinized the evidence of the prosecution witness P.W.-1 Sukhwati who is none else than the wife of deceased and was present at that time in the house when the crime happened, has clearly stated that accused/appellants Hari Ram and Dhani Ram entered the house and Hari Ram attacked with the axe on the head of her husband and Dhani Ram stabbed with the arrow on the stomach as a result of which blood started oozing out of the injuries. She raised cries on which Sukhchand, Manti & Sukki Bai came to the scene of occurrence and she	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.No.1657 सन् 98/200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	apprised the act of the accused persons to them. Accused/appellant Kamlu was standing at the gate of her house and the accused persons ran away thereafter.	
10.	In the cross examination she has stated that on attack by the accused/appellants she woke up and she has further stated that before going to bed her husband apprised her about the fact that when he was returning from Navagaon some quarrel had taken place with Hari Ram and Dhani Ram regarding partition of the land. P.W.-2 Sukh Chand who had stated to be reached after hearing screams of Sukhwati saw that Shukla Ji who was his brother and on the fateful day his brother Shukla Ji asked the accused Hari Ram that why you had not come to his house for celebrating *Navakhani* festival on which Hari Ram replied "as you had given small portion of the field" and started quarrelling with his brother and then they returned from village Navagaon and went for sleep. In the night after hearing the screams of his sister in law Sukhwati he woke up and went to the house of deceased and saw that the accused persons were attacking his brother. On hearing the screams, Fagdu, Manbati and Sukki Bai also came there and he took out the arrow from the stomach of Shukla Ji. P.W.-3 Manbati Bai and P.W.4 Aaytu Ram has also corroborated the above evidence. P.W.-5 Dr. Atul Jain has stated that he conducted the post mortem on the body of Shukla Ji and there was one incised wound on head in the size of 7.5cm x 4cm x 4 cm. and the brain material was coming out. There was a stab wound in boat shape on the left side of the chest near 12th rib and the cause of death was fracture of the parietal bone and frontal bone. The injury inflicted by the accused was fatal and on account of that Shukla Ji died. P.W.-6 Dr. Virendra Singh Doomar who examined the injuries of Shukla Ji has corroborated the evidence of P.W.-	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. A. No. 1659/98 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
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5 Dr. Atul Jain. Therefore, in view of the ocular and medical evidence, involvement of the accused/appellants Hari Ram and Dhani Ram in the crime in question is established and the blood stained axe and arrow were taken into possession. As far as the conviction of the accused Kamlu is concerned, there is no allegation against him that he participated in the crime in question and he was only standing outside the gate and there is no evidence on record that in any way he associated in the crime in question as the crime in question happened in the house whereas he was standing outside the house. Therefore the conviction of the accused Kamlu under Section 302/34 of the IPC is not based on any legal evidence and same cannot be sustained. As far as the offence under Section 302 of the IPC against accused/appellant Hari Ram is concerned, from the evidence of Sukhwati, wife of the deceased it is established that he was the author of the fatal blow which was caused on the head with the axe and as a result of which the parietal bone was fractured and P.W.-5 Dr. Atul Jain has stated that the cause of death was head injury and he attacked the deceased with the deadly weapon like axe on the head-vital part of the body therefore, the intention of the accused/appellant to cause death of Shukla Ji has been established beyond any shadow of doubt. As far as accused/appellant Dhani Ram is concerned, as per the prosecution evidence he also came along with the accused Hari Ram carrying arrow in his hand and when accused Hari Ram attacked with the axe on the head simultaneously this accused also assaulted the deceased with arrow and stabbed the arrow on his chest near 12th rib. As there was dispute between the accused/appellants and deceased Shukla Ji regarding the share of land and there was a quarrel between them before the incident and thereafter accused/appellants Hari Ram and Dhani Ram came

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आदेश पत्रक

मामला क्रमांक ..... C.A. No. 1654 सन् 98 ~~200~~

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
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prepared, as accused Hari Ram was carrying deadly weapon like axe in his hand which was visible and accused Dhani Ram knew the fact that accused Hari Ram was carrying axe and attacking the deceased he also attacked with the arrow, which is also a deadly weapon, therefore the active participation of accused/appellant Dhani Ram in attacking along with the accused/appellant Hari Ram is established.

11. In view of the prosecution evidence the active participation of Dhani Ram in committing the murder of Shukla Ji is established and in order to attract the provisions of Section 34 of the IPC as has been held in the Apex Court Judgment reported in ***2004 AIR SCW 810*** in the matter of ***Girjja Shankar Vs. State of U.P.*** that "***the distinctive feature of the Section is the element of participation in action and the liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Section 34 if such criminal act is done in furtherance of common intention of the persons who join in committing the crime. In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of mind of all the accused persons to commit the offence for which they are charged with the aid of Section 34, be it pre-arranged or on the spur of moment; but it must necessarily be before the commission of the crime. The true concept of Section 34 is that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself. The existence of a common intention amongst the participants in a crime is the essential element for application of this Section. The acts may be different in character, but must have been***

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आदेश पत्रक

मामला क्रमांक C.A. No. 1659/98 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -8-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

actuated by one and the same common intention in order to attract the provision. This Section does not say 'the common intention of all', nor does it say 'and intention common to all'. Under the provisions of Section 34 the essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention".

12. In the instant case, accused Dhani Ram came along with accused Hari Ram who was carrying axe in his hand and Dhani Ram was also carrying arrow in his hand and both of them attacked at the same time therefore the intention of the accused/appellant Dhani Ram sharing with the intention of the accused Hari Ram to cause the death of Shukla Ji is established. Therefore the conviction of the accused Dhani Ram with the aid of Section 34 of the IPC for the commission of murder of Shukla Ji is in accordance with law as the same is based on legal clinching evidence. To that extent we do not find any infirmity or illegality in the conviction and sentence awarded to the accused/appellants Hari Ram and Dhani Ram and there is no reason before us to interfere in the findings of the trial Court.

13. In the result, the appeal of accused/appellants Hari Ram and Dhami Ram being devoid of merits is liable to be dismissed and it is hereby dismissed. However, the appeal of accused/appellant Kamlu is allowed and the judgment and conviction of sentence passed against him by the trial Court under Section 302/34 of the IPC are set aside and he be set at liberty forthwith, if not required in any other case.

Sd/-
L.C. BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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8/3/06 Kamlu 23.3.06